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BEFORE THE
SURFACE TRANSPORTATION BOARD

Ex Parte 582 (Sub-No. 1)

MAJOR RAIL CONSOLIDATION PROCEDURES

REBUTTAL COMMENTS

ON THE

NOTICE OF PROPOSED RULEMAKING

submitted by

THE NATIONAL INDUSTRIAL TRANSPORTATION LEAGUE

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The National Industrial Transportation League ("League") respectfully submits these Rebuttal Comments pursuant to the Notice of Proposed Rulemaking ("NPR") of the Surface Transportation Board ("STB" or "Board") issued on October 3, 2000.

On November 17, 2000, the League submitted its Comments in this proceeding. In those Comments ("NITL Comments"), the League applauded the Board's determination to revise its rail merger policies, and agreed with the two fundamental premises of the Board's NPR, first, that a significant overhaul of the agency's rail merger policies is necessary and appropriate, and second, that the Board should revise its policies with an eye toward affirmatively "enhancing" competition in future rail consolidation proceedings, rather than simply attempting to "preserve" competition. NITL Comments, pp. 5-10.

However, the League believed that the proposed rules should be clarified or improved in a number of respects, and thus also suggested modifications to the Board's proposed rules.

First, the League asserted that the Board's proposed rules were vague or unclear in a variety of areas, and suggested that the rules should be revised to provide both railroads and shippers with much greater specificity as to how and what kind of competition will be enhanced, and what will be required, in future rail merger applications. NITL Comments, pp. 10-14. Second, the League believed that the scope of the Board's rulemaking would create a serious disparity between the competitive conditions facing merging as compared to non-merging carriers, to the detriment of both merging carriers and the shipping public. Thus, the League asked the Board to put into place procedures that would work to insure greater rail-to-rail competition for both merging and non-merging carriers. NITL Comments, pp. 15-18. Finally, the League presented a number of suggestions in other areas, including the definition and treatment of major gateways; the content of service assurance plans; the treatment of the acquisition premium in rail mergers; proposals for post-merger operational monitoring; trans-national issues; and downstream and crossover effects. NITL Comments, pp. 18-32. Whenever the League made a suggestion concerning the Board's October 3 proposal, it provided the Board with specific language that the Board could use in revising its proposed rules.

On December 18, 2000, the League submitted its Reply Comments in this proceeding. In those Reply Comments ("NITL Reply Comments"), the League first discussed how other parties to this proceeding supported, in their own Comments to the Board, the thrust of the League's analyses and the direction of the League's suggestions for improving the proposed rules. NITL Reply Comments, pp. 4-16. The League's Reply Comments then discussed the comments submitted by the Association of American Railroads ("AAR") and many of the nation's Class I rail carriers, and showed that the criticisms leveled

by those parties at the Board's rules were not supported by the law or by sound public policy. NITL Reply Comments, pp. 16-27. In particular, the League showed in its Reply Comments that the Board's proposal to "enhance competition" is fully consistent with the governing statute, and that there is abundant support in this record and in the record in the lead docket (Ex Parte 582, *Public Views on Major Rail Consolidations)* for the Board's conclusion in its NPR that future rail mergers are likely to result in anticompetitive effects that will be difficult to remedy directly or proportionately. NITL Reply Comments, pp. 16-23. The League's Reply Comments also discussed, in opposition to the comments submitted by the AAR and certain of its member railroads, how the Board was justified in concluding that future major rail mergers were likely to produce fewer efficiencies than past mergers. NITL Reply Comments, pp. 23-24. The League also opposed the AAR's and its large railroad members' arguments that the Board should not "presume" that competitive conditions are necessary to address merger-related service problems. The League showed that there is abundant support for the Board's conclusion that future major mergers might be accompanied by transitional service problems. NITL Reply Comments, pp. 24-26. Finally, the League's Reply Comments urged the Board not to dilute the force of its requirement for service assurance plans. NITL Reply Comments, pp. 26-27.

The League is pleased to note that a number of parties in their Reply Comments favorably referred to several of the suggestions presented in the League's November 17 comments. These included the U.S. Department of Transportation ("US DOT"), the U.S. Department of Agriculture ("US DOA"), the American Chemistry Council and the American Plastics Council ("ACC/APC"), the Dow Chemical Company ("Dow"), and a number of other parties. See, Reply Comments of US DOT, pp. 4, 5, 6; Reply Comments of US DOA,

pp. 3, 7, 9; Reply Comments of ACC/APC, p. 3; Reply Comments of Dow, pp. 6, 7. The League appreciates these expressions of support. Moreover, the Reply Comments of many other parties, though not explicitly citing the League's comments, agreed with the thrust and direction of the League's Reply Comments, and leveled criticisms similar to those voiced by the League against the arguments of the AAR and its large member railroads.

Indeed, though numerous parties agreed that the Board's proposed rules needed to be revised in many of the ways advocated by the League in its November 17 Comments, the only parties "out of step" with the policy direction of the Board's NPR were the AAR and its large member railroads. Though the AAR and two of its large members are now attempting in their Reply Comments to manufacture controversy where there is none, in asserting that "there is no consensus among the commenting parties" on the Board's proposals,[1] a fair reading of the Comments and Reply Comments to date clearly supports DOT's unbiased view that there is a "strong degree of consensus on the proposals offered by the Board; on the majority of issues, participants seem to differ with respect to some of the details, but not with respect to the central objective of the provision." US DOT Reply Comments, pp. 1-2. In short, the large majority of the parties to this proceeding agree with the policy direction of the NPR, namely, that the direction of the Board's policy should be shifted toward the "enhancing" of competition, though many parties ask that the proposed rules be made more explicit and suggest various ways to strengthen them. This is in sharp contrast to the policies advocated by the AAR and its large member railroads, which would reverse the policy direction set out by the Board and eviscerate the Board's proposal.

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[1] AAR Reply Comments, p. 2; CSX Reply Comments, p. 14-24; NS Reply Comments, p. 6. No large Class I carrier other than CSX and NS suggested that there is a "consensus" in opposition to the Board's proposal.

In these Rebuttal Comments, therefore, the League will focus these relatively brief comments on the criticisms still being leveled at the Board's proposal by the AAR and by many (but not all) of the AAR's member railroads.[2] While the League will attempt to particularly respond to those places in which its own comments were cited by the AAR or its large member railroads, it will also attempt to respond to their general criticisms even where the League's own comments were not explicitly discussed.[3]

I. THE AAR'S AND ITS MAJOR RAIL CARRIER MEMBERS' ATTACKS ON THE LEAGUE'S AND OTHER PARTIES' SUGGESTIONS REGARDING THE NEED TO BETTER DEFINE THE BOARD'S PROPOSAL FOR "ENHANCING COMPETITION" ARE WRONG

In their December 18 reply comments, the AAR and a number of its major rail carrier members attack the League for its suggestions concerning various aspects of the Board's proposal for "enhancing competition." In its November 17 Comments, the League noted that the Board needs to better define what it means by "enhancing competition," and in particular, that the agency should make clear that a requirement for merger applicants to "enhance competition" must include enhancements to intramodal competition. In addition, the League suggested that the Board needs to consider the fact that "enhancing competition" by creating additional competitive rail access for non-merging carriers to the lines of two merging railroads would create an "unlevel playing field" between merging and non-merging carriers. The League urged the Board to address that issue in its rules, and suggested ways to do so. Finally, the AAR and other major carriers criticize the League on the issue of preserving major gateways and on certain other aspects of the Board's proposal to enhance

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[2] In particular, the League would note that the Comments and Reply Comments of the Kansas City Southern Railroad Company ("KCS") differ markedly in tone and substance from the comments submitted by the AAR and the other large members of that association.

[3] A decision not to discuss specific points is not to be taken as agreement with those points. The League will not exhaustively detail its disagreement with numerous carrier reply comments in the interests of brevity, and because that disagreement can readily be implied from the overall substance of the League's comments.

and preserve competition. Each of these criticisms by the AAR and/or its major railroad members is incorrect, and should be rejected by the Board.

A. The AAR's and Other Railroads' Criticisms Regarding the League's and Other Shippers' Comments on "Intermodal Competition" Are Incorrect

At page 8 of its Reply Comments, the AAR charges that several commenting parties, including the League, urge the Board to "ignore" the role of intermodal competition in applying a public interest standard. This is utter nonsense. Even a cursory review of the League's comments cited by the AAR reveals that the League never urged the Board to "ignore" the role of intermodal competition. Rather, the League asked the Board to make clear that when it specified that merging carriers should include provisions for "enhanced competition" in their merger applications, such applications must include some provision for enhanced rail-to-rail competition. NITL Comments, p. 11. In other words, the League indicated that, though the Board can and should take the existence of enhanced intermodal competition into the calculus of the "public interest" in a particular proposed merger, merging railroads should not be permitted to rely solely on enhanced intermodal competition to fulfill the Board's requirement for "enhanced competition." Rather, the agency's final rule should make clear that enhancements in rail-to-rail or intramodal competition must be proposed by future merging carriers.

The wording proposed by the League was clear on this score. Specifically, the League suggested that the wording of the Board's proposed rules should be revised to read: "*To maintain a balance in favor of the public interest, merger applications must include provisions for enhanced competition, including, but not limited to, significant enhancements of rail-to-rail (intramodal) competition in the area affected by the proposed merger.*" NITL Comments, p. 11 (emphasis added). The extent to which AAR has twisted the meaning of

the League's comments on this point is clearly revealed through a review of US DOT's comments, which correctly interpret the League's point and support the League's request for additional clarification in the Board's final rule on this matter. US DOT Reply Comments, p. 5. The League supports US DOT's discussion of this point, where the federal agency states that "[w]e do not mean to suggest that applicants should be discouraged from offering intermodal enhancements to competition – only that we believe that the Board is, correctly, focusing on rail-to-rail competition in this proceeding. Any intermodal competitive enhancements should be considered additions to, and not substitutes for, intramodal competitive enhancements." US DOT Reply Comments, p. 5 (emphasis added).

B. The AAR's and Other Railroads' Criticisms Regarding the League's Comments Concerning the Need for a "Level Playing Field" Are Wrong

The AAR, at page 10 of its Reply Comments, criticizes the League and other shipper parties for noting that, in providing for "enhanced competition" on the lines of merging carriers, the Board's rules would result in an "unlevel playing field" between merging and non-merging carriers. Thus, the League suggested that the Board should act more broadly to impose certain competitive enhancements on non-merging carriers as well as merging carriers. See NITL Comments, pp. 15-18; AAR Reply Comments, p. 10. Certain of the AAR's large member railroads echoed their association's criticisms; CSX was particularly fevered (and wildly incorrect) in its intemperate charges, stating that "[w]hat NITL wants is total reregulation of the industry." CSX Reply Comments, p. 21, and p. 36.[4]

These criticisms are completely unfounded. First of all, the Board itself, in the very first sentence to its proposed new policy on rail mergers, stated that "[t]o meet the needs of the public and the national defense, the Surface Transportation Board seeks to ensure

[4] See also BNSF Reply Comments, p. 17; NS Reply Comments, p. 15; CP Reply Comments, p. 10.

balanced and sustainable competition in the railroad industry." See proposed 49 C.F.R. §1180.1(a) (emphasis added). The Board's commentary on this provision stated that the Board "must be confident that at the end of the day a balanced and sustainable rail transportation system is in place" following approval of a major merger. See NPR, at p. 11 (emphasis added). But "balanced and sustainable competition" will be difficult and perhaps impossible to achieve if merging railroads must provide competitive access over their lines, but the merging carriers cannot seek additional business on the lines of their competitors. The League's suggestion for the Board to use its powers under 49 U.S.C. §§11102(a) and (c) to provide for concomitant access over the lines of non-merging carriers, where and to the extent that merging carriers provide access over their own lines, is thus intended to meet the stated fundamental objective of the Board's NPR.

Second, the League's argument regarding the "unlevel playing field" aspect of the Board's proposed rule, and the League's proposed remedy for the "unlevel playing field" problem, is not a call for reregulation of the industry. Indeed, other parties whose commitment (like the League's) to competitive rail markets is unquestioned, raised similar concerns. For example, the League would note that US DOT indicated that the Board should "require all carriers serving affected gateways, not just the merging railroads, to be included in the [proposed gateway preservation] rule. . . . [S]uch a condition would preserve, and perhaps enhance, effective gateway competition without placing merging carriers at a competitive disadvantage compared to other competing carriers serving the gateway." US DOT Reply Comments, p. 4 (emphasis added), quoting DOT Initial Comments, at 4. The US DOT also noted that, in its Comments and Reply Comments, while the Board's proposal "might provide bottleneck relief for shippers affected by the transaction, those shippers that

are not a part of the transaction would not benefit." US DOT Reply Comments, p. 4. US DOT accordingly suggested that "the issue of bottleneck access should be the subject of an industry wide rulemaking." *Id.* Similarly, in its Comments, the League noted that, if the Board did not desire to include non-merging carriers as part of its "enhancing competition" approach in its proposed merger rules in this proceeding, the Board could instead commit to reopen its Ex Parte 445 (Sub-No. 1) rules no later than when the next merger application of two Class I carriers is filed, to permit competitive access more broadly. See, NITL Comments, p. 18.

Third, although the League desires to see competitive access through bottleneck relief and reciprocal switching in terminal areas applied to the industry broadly, its proposed merger rule was much more narrow than that. Specifically, the wording of the League's proposed rule on the "unlevel playing field" issue made clear that, if merging carriers proposed "enhanced competition" resulting in access to their lines by other rail carriers, then the Board should impose access over the lines of such other rail carriers only at "the same or similar locations." NITL Comments, p. 17. In other words, the League suggested that, if there were to be "enhanced competition" through reciprocal switching at designated terminals of two merging carriers, then the Board should act under Section 11102 to order reciprocal switching over the lines of non-merging carriers at those same terminals. *Id.* If the Board would adopt the League's suggestion, it would thus be removing a major disincentive for merging carriers to propose "enhanced competition," since merging carriers would have the opportunity to compete for increased business at the locations at which they propose "enhanced competition," and not just be subject to the potential loss of business to non-merging carriers as the result of their proposed merger.

Finally, the League regards the comments of the AAR and certain of its large member railroads in opposition to the League's "unlevel playing field" proposal as simply disingenuous. There can be no doubt that, if the Board fails to adopt the "unlevel playing field" rule advocated by the League, the very first argument by two merging Class I carriers in opposition to any proposal for "enhanced" rail-to-rail competition in the next merger proceeding will be that such "enhanced competition" will result in a "disastrous" loss of business for the two merging carriers, without any opportunity for business gains or growth. The Board should thus address this issue now, by ruling that it will impose comparable access via trackage rights or reciprocal switching under 49 U.S.C. §11102 to the extent that merging carriers propose, or the Board orders, access over the lines of merging carriers, as the League suggested in its initial Comments.

C. The Criticisms Voiced by a Number of Major Rail Carriers Against the League's and Other Shippers' Suggestions Regarding Major Gateways Miss the Mark

Certain major carriers argued in their reply comments that shipper requests to revise the Board's proposed rules regarding major gateways should be rejected. See, *e.g.,* UP Reply Comments, pp. 14-15; NS Reply Comments, pp. 12, 24-25; CSX Reply Comments, p. 34. These critics may misunderstand the import of the League's position.

In its Comments, the League indicated that the Board's gateway preservation rule should not be restricted to "major" gateways, not only because the rule contains no definition as to what constitutes a "major" gateway, but also because inefficient gateways have already been closed, and the burden should thus be on the carriers to show that the closing of an existing interchange is justified. NITL Comments, pp. 18-20. The League's proposed rule would not, however, forbid a carrier from ever closing any interchange: it would simply

place upon the carrier the burden of showing that maintenance of an existing interchange was inefficient. See NITL proposed language, NITL Comments, p. 20.

Most importantly, the League is not advocating in any way a return to the old *DT&I* conditions in advocating that interchanges be preserved both physically and economically. The League is not advocating rate equalization in any form, or rigid rate caps. However, the Board's proposed rules should require merging carriers to design in their merger applications workable procedures to ensure that interchanges remain open both physically and economically, in order to preserve shippers' competitive routing options. The wording of the League's proposed rule leaves it to the discretion of merging carriers to propose procedures to preserve those options in the way that the merging carriers thought would best achieve that goal. See, NITL Comments, p. 20. The League would note that US DOT specifically agrees with the League that major routes and gateways should be preserved both physically and economically. US DOT Reply Comments, p. 4. In addition, the League would note that BNSF also agrees that gateways should be kept open on both an operational and economic basis. BNSF Reply Comments, p. 28.

II. THE AAR'S AND OTHER MAJOR RAILROADS' CRITICISMS REGARDING SHIPPERS' AND OTHER PARTIES' SUGGESTIONS ON SERVICE ASSURANCE PLANS SHOULD BE REJECTED

Many commenters, including the League, asked the Board to include provisions for compensation of shippers in the event of service deterioration after a future merger, and to require expedited arbitration of damage claims resulting from such service failures. In contrast, the AAR and its large member carriers opposed any requirements for compensation for service failures, and opposed any expedited claims mechanism. See, AAR Reply

Comments, pp. 13-14; NS Reply Comments, pp. 38-40; CSX Reply Comments, pp. 40-43; CP Reply Comments, pp. 11-13.

AAR first argues that railroads already have financial and commercial incentives to avoid service disruptions. AAR Reply Comments, p. 14; see also CSX Comments, p. 41. But the existence of these incentives has clearly not been sufficient to prevent the service disruptions that have occurred in the past. The matter of widespread service disruptions is of such great moment that the very strongest incentives should be provided to carriers to implement rail mergers smoothly, and for that matter, to avoid rail mergers which may not be possible to implement smoothly. But more to the point, shippers should not be penalized, through the costs they incur in the course of merger-related service disruptions, for the choices that merging carriers make in entering and implementing future rail mergers. Thus, the Board, through its conditioning power, should insure that carriers provide quick and inexpensive remedies to shippers for service deterioration resulting from a future rail merger.[5]

Second, the AAR argues that numerous remedies for service disruptions are already available. AAR Reply Comments, p. 14; see also, CSX Reply Comments, p. 41. But many shippers, especially smaller shippers with little bargaining power, do not have contractual remedies. Even for large shippers, remedies available through the courts are often lengthy and expensive, and for smaller shippers, the cost of bringing such actions will often dwarf any potential recovery. If carriers propose to merge, they should be required to provide

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[5] The League would note that it has not advocated, in its Comments, that there should be remedies if the projections of merging carriers should fail to materialize: it has limited its right to remedies only to "*damages experienced as a result of the failure of the applicant carriers to provide service to any shipper at levels experienced prior to the implementation of the transaction. . . .*" NITL Comments, p. 24. Of course, the League also believes that the promises of merging carriers should be scrutinized very carefully in the course of the agency's review of the merger application.

expedited, inexpensive means of resolving disputes over damages for service failure, since they should not be permitted to escape the responsibilities for damages that flow directly from the merger that the carriers have implemented, through the costs and delay of ligation through the courts.

The League would note that BNSF "steps up to the plate" on this issue and agrees that the Board should consider in a merger proceeding remedies for service problems and the procedures for resolving disputes. BNSF Reply Comments, p. 32.[6] However, BNSF believes that these matters should be decided on a case-by-case basis. The League respectfully disagrees. The League sees no reason why the Board should not set forth in its final rule, as suggested by the League, a broad requirement that merging carriers must provide in their application a promise of compensation to shippers for service failures, and expedited means of resolving disputes over the amount of damages suffered. Within those broad parameters, merging carriers can then design standards and procedures that they believe will fairly compensate shippers for service disruptions flowing from merger implementation, which standards and procedures can then be commented upon by parties to a future merger proceeding. Without at least the requirement to include a promise of compensation and expedited means of resolving disputes in a merger application, however, there is the very real possibility that future merging carriers will not offer such remedies at all.[7]

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[6] UP also agrees that the Board should provide a "base level of financial protection for shippers who do not negotiate service contracts." UP Reply Comments, p. 11. The League welcomes UP's agreement as to the principle of compensation for service disruptions. However, the specific procedures advocated by the UP would in fact provide virtually no protection or compensation to shippers in the event of future service failures.

[7] In its Comments and Reply Comments, the US DOT urges the Board to place "significant weight" on evidence of the applicants' willingness to offer service guarantees in judging the merit of an application. US DOT Comments p. 9; US DOT Reply Comments p. 6. The League understands and agrees with US DOT's concerns that the Board should not impose "direct regulation of service levels." *Id.* However, the League believes that a simple, broad requirement that merging carriers must offer a service guarantee appropriate to

III. THE AAR'S AND OTHER MAJOR RAILROADS' COMMENTS REGARDING THE LEAGUE'S VIEWS ON ALLIANCES AND JOINT VENTURES MISUNDERSTAND THE LEAGUE'S POSITION

At page 11 of its Reply Comments, the AAR charges that several shippers urge the Board to extend its regulatory jurisdiction beyond the review of mergers to include alliances and joint ventures.[8] The AAR misunderstands the League's position.

In its Comments, the League submitted an extended discussion of current law with respect to alliances. NITL Comments, pp. 28-30. The import of this discussion was not that the Board should affirmatively extend its regulatory jurisdiction beyond the review of mergers to include alliances, but rather that current law may be argued to be unclear as to whether the Board or the Department of Justice would have jurisdiction to review a proposed alliance. Indeed, the question of proper jurisdiction may, in a particular case, depend upon the facts generated by the particular alliance or joint venture.

In view of this uncertainty, and because the competitive (or anticompetitive) effects of a particular future alliance or joint venture are not and cannot now be known, the League believes that the Board should be very cautious in "blessing" these arrangements in the absence of a specific case at hand. NITL Comments, pp. 28-29. The last sentence of proposed Section 1180.1(c) appears to go too far in approving of these arrangements, before any facts of a particular alliance or joint venture arrangement are presented. The League believes that the Board should delete the last sentence of proposed Section 1180.1(c), to avoid any appearance that the Board has broadly approved of joint venture or alliance

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their situation would insure that shippers are protected, without directly and unduly interfering with carrier operations. The League is concerned that US DOT's approach could result in a lack of protection for shippers, should the Board decide to approve a merger application despite the fact that the merger application did not contain a service guarantee.

[8] See also, BNSF Reply Comments, p. 38; NS Reply Comments, p. 35; CP Reply Comments, pp. 5-7.

arrangements, and leave it to future proceedings to determine both the proper jurisdiction for reviewing the legality of an alliance or joint venture, and the competitive or anticompetitive effects of a particular arrangement.

IV. THE AAR'S AND OTHER MAJOR RAILROADS' CRITICISMS REGARDING THE LEAGUE'S SUGGESTIONS ON OPERATIONAL MONITORING ARE WRONG

At page 16 of its Reply comments, the AAR criticizes the League and other parties for attempting to establish "specific" and "inflexible" reporting requirements during the oversight period. The AAR asks that no rule be imposed, but that such requirements be imposed on a case by case basis.[9]

The League disagrees, as does the US DOT, which specifically commends the League for offering "specific language for inclusion of transit and cycle times" as "benchmark measures of service levels . . . as well as benchmarks that measure the railroads' operating performance." US DOT Reply Comments, p. 5. Transit and cycle time information would be extremely useful to the Board and to the shipping public in order to monitor the performance of merging carriers more carefully. This is fundamental data: there is no need to impose it on a case by case basis, and it should be part and parcel of the monitoring of every future merger as a matter of course. The comment of CSX counsel that transit and cycle time information have "no real value as a managerial tool," CSX Reply Comments, p. 86, is simply absurd, particularly when other carriers such as BNSF and CN have publicly trumpeted the fact that their management is actively monitoring and attempting to improve transit and cycle times in order to make service more predictable and more expeditious.[10]

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[9] See also, CSX Reply Comments, p. 85.

[10] CSX charges that the League's proposal for cycle time information over major corridors allegedly reflects "confusion" because it assumes 100% empty return of freight cars. CSX Reply Comments, p. 86. This criticism is utterly misplaced. For some rail traffic, such as merchandise traffic, transit time information is the proper measure. For others, such as unit coal trains, cycle times are the appropriate service measure. The use of "transit" and "cycle times" is intended to apply to the appropriate traffic involved.

V. THE AAR'S AND OTHER MAJOR RAILROADS' DISCUSSION OF THE ISSUE OF THE BOARD'S TREATMENT OF ACQUISITION PREMIUMS SHOULD BE REJECTED

In its Reply Comments, the AAR states, in opposition to the position of the League and other parties, that there is no reason to address the issue of the acquisition premium at this time. See, AAR Comments, p. 17. The League disagrees. For the reasons stated in its Comments, the League believes that the Board should revisit the acquisition premium issue. See, NITL Comments, p. 27.

VI. CONCLUSION

The only parties uniformly opposed to the policy direction of the Board's proposals and the thrust of the League's comments – the AAR and its major Class I rail carrier members – have failed to rebut the criticisms leveled by the League and other parties against the railroads' attacks on the Board's proposals. Thus, the League respectfully requests the Board to modify its proposed rules in the manner suggested by the League in its November 17 comments.

Respectfully submitted,

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Dated: January 11, 2001

Certificate of Service

I hereby certify that I have on this 11th day of January 2001 served the foregoing Rebuttal Comments on all parties of record in this proceeding, by first class mail, in accordance with the Board's order in this case and the agency's Rules of Practice.